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In re Application
Mirkin et al.
Application No. 09/866,533
Filed: May 24, 2001
Atty Docket No. 4183-1-1

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: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT
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This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed July 21, 2004. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from four hundred nineteen (419) days to four hundred eighty-seven (487) days.

The application for patent term adjustment is GRANTED.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is four hundred eighty-seven (487) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On June 7, 2004, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 419 days. On July 21, 2004, applicants timely¹ submitted an application for patent term adjustment (with required fee). Applicants dispute the reduction of 68 days attributed to applicant for failing to respond within three months to the Notice to File Missing Parts of Application mailed August 2, 2001.

Applicants specifically state that the patent issuing from the application is not subject to a terminal disclaimer.

The reduction of 68 days has been found to be incorrect. A review of the application file reveals that applicants' response to the Notice to File Missing Parts of Application mailed August 2, 2001, is of record in the application with a date of receipt by the Office of October 25, 2001. Furthermore, the response included a complete reply to the Notice. Thus, the Office should

¹ The Issue Fee payment was received in the Office on July 21, 2004.

not have assessed applicants a delay of 68 days. The response was filed within the three-month period under 37 CFR 1.704(b) and accordingly, applicants' delay should have been assessed as zero (0) days. Applicants did not fail to engage in reasonable efforts to conclude prosecution of the application by delaying in replying to the Notice to File Missing Parts of Application.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is four hundred eighty-seven (487) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Office of Patent Publication for issuance of the patent.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

Karin Ferriter
for

Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy

Enclosure: Copy of Revised PAIR Screen